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CLEARINGHOUSE RULE 98-073

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

a. Section NR 191.03 (6) should be rewritten to specify that lake classification projects, in addition to classifying lakes by use, also implement protection activities for the lakes based on their classification. See s. 281.69 (1) (b), Stats., as created by 1997 Wisconsin Act 27.

b. Section NR 191.04 (1) should specify that any purchase of property using grant funds provided under ch. NR 191 is subject to the conditions set forth in s. 281.69 (3) (b) 1., Stats.

2. Form, Style and Placement in Administrative Code

a. In the treatment clause of SECTION 1, the word “Chapter” should be inserted before the reference to “NR 191.”

b. In s. NR 191.03 (7), the new material beginning with the word “Also” is an incomplete sentence.

c. The introductory material of s. NR 191.04 should be replaced by the phrase “All of the following activities are eligible for grants under this chapter:”. In sub. (4) (b) (intro.), the phrase “, as defined in s. NR 191.03 (7)” should be deleted and the phrase “all of” should be inserted after the word “meets.” In sub. (5), the introductory material beginning with “Lake classification” should be renumbered as par. (a) and the clause beginning with the phrase “The following factors” should be combined with the first sentence of the subsection. In sub. (5) (b),

the cross-reference should be replaced by a reference to sub. (3). In sub. (5) (c), the Note contains substantive material that should be incorporated into the body of the rule. In sub. (6) (a), a semicolon should be inserted before the phrase “and water safety patrols.”

d. In s. NR 191.09 (2) (intro.), the phrase “any of the following” should be inserted after the word “include” and the semicolons following pars. (a) and (b) should be replaced by periods. In sub. (3), the first sentence should be renumbered as par. (a) and the introduction to par. (a) contained in the rule should be combined with the first sentence.

e. In SECTION 14, the repealing and renumbering actions should be treated in separate SECTIONS.

f. In s. NR 191.105 (1) (a), the material before the first period is an incomplete sentence. Perhaps the phrase “is provided” should be inserted after the phrase “sufficient information.” Also, in par. (a), the phrase “lake management planning grants” is stricken through; recreated provisions should not show stricken-through or underscored material. In sub. (1) (d), the phrase “and/or” should be avoided. [See s. 1.01 (9), Manual.] In sub. (1) (f) (intro.), the phrase “all of the following” should be inserted before the colon and the semicolons concluding the subdivisions should be replaced by periods.

g. The entire rule should be reviewed for conformity with correct drafting style regarding mandatory and permissive actions. For example, in s. NR 191.105 (1) (f), “will” should be changed to “shall.” [See s. 1.01 (2), Manual.]

h. In s. NR 192.02, the phrase “, as defined in this chapter,” is unnecessary and should be deleted.

i. In s. NR 192.03, the introductory material should be replaced by the phrase “In this chapter;”.

j. In the first sentence of s. NR 192.04 (2), “as provided for” should be deleted. In addition, that subsection should explain the difference between “priority” and “eligible” activities.

k. In s. NR 192.06, the annual list of priority activities for lake classification technical assistance grants should be promulgated as an administrative rule under ch. 227, Stats.

l. In s. NR 192.07 (1), underscoring should not be used. In sub. (3), reference is made to making an application in accordance with application instructions. The department should ensure that these instructions do not contain material that should be promulgated as administrative rules under ch. 227, Stats.

m. Chapter NR 192 should be reviewed so that the sections of the chapter follow the chronology of the application and grant process. For example, s. NR 192.05 contains provisions regarding accounting, record keeping and submission of claims. These provisions should be at, or near the end of, the chapter. The creation of priorities and the submission of applications should appear first in the chronology.

4. Adequacy of References to Related Statutes, Rules and Forms

a. In the analysis to the rule, all references to s. 281.69, Stats., should be followed by the notation “as affected by 1997 Wisconsin Act 27.”

b. Section NR 191.09 (2) should specify that a grant award may not exceed the maximum amount set forth in s. NR 191.07 (2).

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. NR 191.04 (4) (intro.), what is meant by the phrase “Activities will be distinguished as follows:”?

b. It is unclear what is meant by s. NR 191.08 (5) (d). Specifically, the rule states that for lake classification projects, the “level of consistency with the provisions described in s. NR 191.04 (5)” shall be used to determine priorities. This phrase tends to imply that the provisions in s. NR 191.04 (5) are discretionary for purposes of s. NR 191.08 (5) (d). This point should be clarified.

c. Section NR 191.10 (11) should be rewritten to clarify that the use of the power of eminent domain must be related to the project for which a grant is sought in order for the use of the power of eminent domain to disqualify an applicant.

d. The title to s. NR 191.105 refers to grants for lake protection projects; however, sub. (1) (e) of that section refers to lake improvement projects. This discrepancy should be clarified.

e. Should the phrase “whichever is later” be added to the end of the first sentence in s. NR 191.105 (1) (h)?

f. Section NR 192.04 (1) is grammatically incorrect and should be rewritten as a complete sentence.

g. The last sentence of s. NR 192.05 (1) should be rewritten to clarify whether the final payment referred to is a final payment from the Department of Natural Resources or the final payment by a sponsor.

h. Under s. NR 192.05 (4), how is it to be determined what portion of the state share is to be repaid by a sponsor? Is there any procedure under which a grant recipient can appeal the department’s decision that grant funds must be repaid?

i. In s. NR 192.08 (1) (intro.), “projects” should be replaced with “applications.”

j. In s. NR 192.08 (1) (a) and (d), it appears that the defined terms “management unit” and “sponsor” should be used rather than the terms “local units of government” and “lake management organizations.” Also, the notation “(1)” preceding the introduction in this section should be deleted and pars. (a) to (d) should be renumbered as subs. (1) to (4).

k. Section NR 192.09 (6) and (7) specify when certain portions of grants are to be disbursed. Should the rule specify the schedule under which the remaining grant funds are to be disbursed?